In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No. 4486 of 2007

Date of Decision: 13.11.2007

Abdul Rehman and Another

…Petitioners

Versus

Mohd. Ruldu and others

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Gautam Dutt, Advocate
for the petitioners.

Mr.B.R.Mahajan, Advocate
for respondents No.1 to 3.

RAJESH BINDAL, J.

The prayer made in the present petition is for setting aside of order dated June 6, 2007 passed by the learned Civil Judge (Junior Division), Malerkotla, whereby an application filed by the petitioners/plaintiffs for amendment of the plaint was dismissed.

Briefly, the facts are that the petitioners/plaintiffs filed a suit for permanent prohibitory injunction restraining the respondents/defendants from forcibly and illegally dispossessing the petitioners/plaintiffs from the land in dispute. The suit was filed on September 22, 2003. It was mentioned in the suit originally filed by the petitioners/plaintiffs that the respondents/defendants were trying to dispossess the petitioners/plaintiffs from the suit land in the garb of sale deeds in their favour. During the pendency of the suit, present

application was filed for amendment of the plaint seeking relief of declaration to the effect that the sale deeds executed by one Ramzanan in favour of respondents/defendants have no effect on the rights of the petitioners/plaintiffs. The application was contested by the respondents/defendants raising the plea that the same is not bonafide as the issues sought to be raised are based on the facts which were well within the knowledge of the petitioners/plaintiffs even at the time of filing of the suit as the same were even mentioned by them in the suit filed by them but no relief for declaration was claimed.

Learned trial Court, while considering the respective contentions of the parties, rejected the application primarily on the reason that the same would change the nature of the suit as the suit for injunction was sought to be converted into a suit for declaration.

Learned counsel for the petitioners/plaintiffs submitted that the application filed by the petitioners is bonafide and it is just and proper to accept the prayer made so as to enable the Court below to decide the lis between the parties in its entirety, which will result in avoidance of multiplicity of litigation. Reliance has been placed on judgment of Hon'ble the Supreme Court in ***Rajesh Kumar Aggarwal and others v. K.K.Modi and others 2006 (2) Recent Civil Reports (Civil) 577*** and ***Pankaja and another v. Yellappa (D) by LRs. & Others 2004(3) Civil Court Cases 401 (SC)***.

On the other hand, learned counsel for the respondents/defendants, objecting to the prayer made by the petitioners/plaintiffs, submitted that the facts on the basis of which the amendment is sought to be made and relief of declaration is prayed were well within their knowledge at the time of filing of the suit. The sale deeds, declaration with regard to which is sought to be prayed by way of amendment, were already mentioned by the petitioners/plaintiffs in the suit originally filed. It was only injunction which was prayed for by the petitioners/plaintiffs at the time of filing of the original suit submitting that the respondents/defendants were trying to dispossess the petitioners from the suit land on the basis of sale deeds in their favour. Relying upon various judgments, namely ***Prem Chand v. Chetan Dass 2006(2) Civil Court Cases 41 (P&H), Sayanna and Another v. Thimanna and Another 2003(1) Civil Court Cases 595 (AP), Mrs.Sharan Arora v. Parkash Kaur and others (2000-3) 126 Punjab Law***

Reporter 80 (P&H) and ***Umrao Singh v. Ram Dulari and Others 1998(2) Civil Court Cases 110 (Delhi)***, the submission is that the amendment, as sought by the petitioners/plaintiffs will entirely change the nature of the suit as the suit for injunction is sought to be converted in the suit for declaration. Further, it is submitted that the facts were well within the knowledge of the petitioners/plaintiffs even at the time of filing of the suit. Accordingly, the impugned order passed by learned Court below was not called for any interference.

Having heard learned counsel for the parties and perusing the judgments cited by them, I am of the view that the prayer made by the petitioners/plaintiffs does not deserve acceptance for the reason that admittedly the facts on the basis of which amendment in the suit for grant of prayer for declaration is being sought, were well within the knowledge of the petitioners even at the time of filing of the present suit, as these sale deeds were even mentioned in the plaint originally filed. The submission that in case the proposed amendment is allowed the same would result in addition of new parties, change in entire pleadings as well as the prayer made in the suit has merit. Still further, the learned trial Court was right in observing that in case the prayer for amendment is allowed, the same would result in change in the nature of the suit as the suit for injunction will be converted into suit for declaration. In ***Rajesh Kumar Aggarwal's case*** *(supra)*, Hon'ble the Supreme Court opined that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice. However, the same was subject to the condition that the basic structure of the suit should not be changed. In ***Pankaja's case*** *(supra)*, the issue regarding amendment was considered only on account that the application being delayed.

This Court in ***Prem Chand's case*** *(supra)*, while considering the number of earlier judgments on the issue, opined that where the facts sought to be incorporated in the plaint by way of amendment were well within the knowledge of the plaintiffs at the time of filing of the original suit and further the proposed amendment in case changes the nature of the suit, that certainly causes prejudice to the rights of the other parties and cannot be allowed. Similar is the view expressed in ***Sharan Arora's case*** *(supra)*.

For the reasons mentioned above, I do not find any merit in the present petition and the same is dismissed.

The parties through their learned counsels are directed to appear before the learned trial Court for further proceedings on December 13, 2007.

(Rajesh Bindal)
Judge

November 13, 2007
"DK"